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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JAMES E. DUNSTAN
ADMITTED IN D.C. ONLY

January 19, 1993

OUR FILE NO.
1073-101-63

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 92-259
Implementation of the Cable Television
Consumer Protection and Competition
Act of 1992

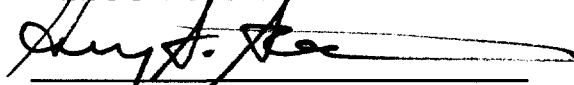
Dear Ms. Searcy:

Submitted herewith on behalf of COMMUNITY BROADCASTERS ASSOCIATION, are their REPLY COMMENTS in the above-referenced proceeding. Enclosed are an original and nine copies, a copy for each of the Commissioners.

If there are any questions concerning this matter, please communicate directly with this office.

Respectfully submitted,

COMMUNITY BROADCASTERS
ASSOCIATION



Henry A. Solomon

James E. Dunstan

Its Attorneys

Enclosures (10)

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Before The
Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Washington, D.C. 20554

In The Matter Of)	
)	
Implementation of the Cable)	MM Docket No. 92-259
Television Consumer Protection)	
and Competition Act of 1992)	
)	
Broadcast Signal Carriage Issues)	

To: The Commission

**REPLY COMMENTS OF THE COMMUNITY
BROADCASTERS ASSOCIATION**

The Community Broadcasters Association ("CBA"), by its attorneys,
respectfully files its reply comments in the above-entitled proceeding.

In support hereof the following is shown:

I. SUMMARY

- General rules of applicability defining qualified LPTV stations are critical to avoid paralyzing petitions for waiver similar to what occurred prior to the Quincy decision.
- Commenters agree that there is a need for stability in channel lineups, and the need to minimize subscriber disruptions because of regulatory changes. These comments support CBA's position that once an LPTV station has become a qualified must-carry signal, it should not become disqualified if a new full power station goes on the air in its home county.
- Satellite television stations should not be considered "local television signals" for the purposes of LPTV carriage determination. These stations merely rebroadcast the signal of the parent station and do nothing to fulfill the local programming needs of subscribers in rural areas.

II. COMMENTS BY VARIOUS CABLE INTERESTS UNDERScore THE NEED FOR GENERAL RULES FOR LPTV COVERAGE

A number of cable companies seek through this regulatory proceeding to turn back the regulatory clock to the time prior to the Quincy decision when the Commission was paralyzed by thousands of carriage waiver petitions. Case-by-case adjudications, then the practice, resulted in inordinate processing delays of up to three years and ill-served the public interest by denying cable subscribers access to qualified must-carry signals. Cable interests now urge the Commission to adopt similarly paralyzing rules with respect to LPTV carriage. See Comments of Tel-Com, pp. 19-20; Comments of Action Corporation, p. 16. This position is understandable: by resurrecting case-by-case adjudication of carriage issues, cable systems would receive the benefit of not having to carry qualified LPTV stations pending a direct order from the FCC, and would be able to delay carriage still further by invoking the appeal process. This desired procedural black hole contravenes congressional intent and should not be adopted.

CBA urges the FCC to be cognizant of the clear and specific language contained in Section 4 of the Act, make the minor clarifying modifications suggested by CBA in its Comments, and adopt LPTV carriage rules of general applicability. Should a cable system conclude thereafter that a particular LPTV station is not qualified, it may seek special relief in an expedited proceeding, but could not use the adjudicatory process as a weapon to frustrate qualified LPTV access to local carriage.

III. COMMENTS OF OTHERS SUPPORT CBA'S CONTENTION THAT LPTV DISPLACEMENT IS NOT REQUIRED BY THE STATUTE AND IS NOT IN THE PUBLIC INTEREST

Uniform among the comments of broadcasters and cable interests is the need for stability in markets leading to stability in the signal line-up offered to cable subscribers. See e.g., Comments of Time Warner, p. 16; Comments of Adelphia Communications; Comments of United Video; Comments of NAB, p. 11. A number of broadcasters argue that the Commission should change ADI definitions, and therefore must-carry zones, only once every three years. See Comments of NAB, p. 11; Comments of Fox, p. 8; Comments of Capital Cities/ABC, p. 5; Comments of Great American Broadcasting.

INTV goes even farther, arguing that once a full service station has gained must-carry status, a change in the ADI should not remove such carriage rights. Comments of INTV, p. 8. INTV stresses the importance of historic carriage and the public interest inherent in not removing a signal offered to cable subscribers just because of the somewhat arbitrary changes instituted by Arbitron in moving counties from one ADI to another.¹ If cable subscribers in these counties are entitled to continue to receive the signals of independent stations located in the urban core of the market, possibly a hundred or more miles away, as INTV suggests, then they certainly are entitled to continue to receive locally oriented programming of an LPTV station licensed to the county,

¹ These "swing counties" -- counties on the outskirts of ADIs which are switched from one ADI to another on almost a yearly basis because of minor swings in viewing patterns -- are in many cases the homes of community broadcasters, since they normally represent the more rural areas traditionally underserved by full power stations.

regardless of whether a new full power station is activated. Low power licensees and cable subscribers who will benefit from LPTV programming are entitled to this measure of stability.

CBA therefore strongly urges the Commission to adopt the regulations proposed in CBA's Comments that once an LPTV station achieves must-carry rights, those rights are not extinguished merely by the emergence of a new full power station, which may or may not meet the local needs of the county. As CBA demonstrated in its Comments, such a regulation is entirely consistent with prior FCC practice and is in the public interest.

IV. CBA SUPPORTS THE COMMENTS OF MORAN COMMUNICATIONS CONCERNING TREATMENT OF SATELLITE STATIONS AND THE DEFINITION OF QUALIFIED LPTV STATIONS

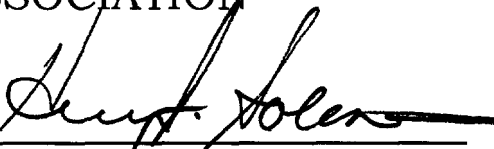
CBA agrees with the Comments filed by Moran Communications, licensee of W20AT, Roanoke Rapids, North Carolina, on a number of issues. Moran correctly points out that since television satellite stations, by definition, are merely high power translators rebroadcasting their parent station's programming, the fact that a satellite station operates in the county of an otherwise qualified LPTV station should not disqualify the local LPTV outlet from carriage. The Act distinguishes between delivering a signal to outlying areas of a market and delivering a signal which contains programming which fulfills viewers' needs for local information. CBA urges the Commission to adopt a regulation which excludes from the definition of "local station" for purposes of Section 4, a satellite television station.

CBA also supports Moran's position that the FCC should use an LPTV station's Issues/Programs list to determine qualifications should a dispute arise. As CBA pointed out in its Comments and above, such a review would be necessary only if a cable system petitioned the Commission claiming that an otherwise qualified LPTV station's programming was not fulfilling community needs. Again, the burden of establishing a prima facie case should be on the cable system, not on the LPTV station, which the cable system has every reason to keep off the system.

WHEREFORE, the above premises considered, CBA urges the Commission to adopt the proposals set forth in CBA's Comments and there Reply Comments.

Respectfully submitted,

COMMUNITY BROADCASTERS
ASSOCIATION

By 

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